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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

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CERRO COPPER PRODUCTS CO.,

Plaintiff,

v.

MONSANTO COMPANY,

Defendant.

Civil Action No.

92-CV-204-PER

**MONSANTO COMPANY'S MOTION FOR AN ORDER
PROHIBITING CERRO COPPER PRODUCTS COMPANY
FROM ASSERTING PRIVILEGE OBJECTIONS TO THE ADMISSION
OF OR QUESTIONING CONCERNING CERTAIN DOCUMENTS**

Defendant Monsanto Company ("Monsanto") moves that this Court issue an Order under Federal Rule of Civil Procedure 37(a) prohibiting plaintiff Cerro Copper Products Company ("Cerro") from asserting privilege objections to the admission of or questioning concerning certain documents. In support of this Motion, Monsanto states as follows:

1. On April 27, 1995, Dr. James Patterson was deposed by Monsanto at the offices of Jenner & Block, in Chicago, Illinois.
2. During the deposition of Dr. Patterson, Monsanto's attorney, Joseph G. Nassif, attempted to question Dr. Patterson concerning documents produced by Cerro to Monsanto and concerning documents produced by Dr. Patterson (Patterson and Associates) to Monsanto. Cerro's counsel, Richard F. Ricci, asserted attorney-client privilege and/or work-product doctrine and instructed Dr. Patterson not to answer certain questions concerning the following documents:

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- (a) Patterson Exhibit 3: Renum 045486-88 (12/4/85 handwritten notes). See Exhibit A, attached.
- Produced by Cerro to Monsanto in October, 1993.
 - Marked as Exhibit 72 to the deposition of Paul Tandler on 08/15/94. Mr. Tandler was questioned about the document and Cerro raised no objection.
- (b) Patterson Exhibit 14: RENUM 044940 (4/21/87 letter from Dr. Patterson to Susan Franzetti). See Exhibit B, attached.
- Produced by Cerro to Monsanto in October, 1993.
 - Marked as Exhibit 46 to the deposition of Sandy Silverstein on 7/18/94. Mr. Silverstein was questioned about the document and Cerro raised no objection.
- (c) Patterson Exhibit 24: Renum 044474-82 (6/8/89 "Discussion Document"). See Exhibit C, attached.
- Produced by Cerro to Monsanto in October, 1993.
 - Marked as Exhibit 57 to the deposition of Joe Grana on August 10, 1994. Mr. Grana was questioned about the document and Cerro raised no objection.
 - Marked as Exhibit 100 to the deposition of Paul Tandler on August 16, 1994. Mr. Tandler was questioned about the document and Cerro raised no objection.
 - Richard Ricci, by letter to Bruce Ryder, requested the return of this document on September 28, 1994, almost one full year after it had been produced. See Exhibit D, attached. The document is still in Monsanto's possession.

- (d) Patterson Exhibit 30: Renum 006807/duplicate Renum 005011 (07/26/89 letter from Carl Schafer to Susan Franzetti). See Exhibit E, attached.
- Produced by Cerro to Monsanto in October, 1993.
 - Marked as Exhibit 71 to the deposition of Joe Grana on August 10, 1994. Mr. Grana was questioned about the document and Cerro raised no objection.
- (e) Patterson Exhibit 22: Renum 0044741-46 (3/8/88 letter from Carl Schafer to Dick Kissel with attachment). See Exhibit F, attached.
- Produced by Cerro to Monsanto in October, 1993.
 - Marked as Exhibit 93 to the deposition of Paul Tandler on August 16, 1994. Mr. Tandler was questioned about the document and Cerro raised no objection.
- (f) Patterson Exhibit 29: CER 182137-40 (7/24/89 letter from James Patterson to Robert Webb, with attachment). See Exhibit G, attached.
- Produced by Patterson & Associates to Monsanto in November, 1994.
- (g) Patterson Exhibit 12: CER 171913-17 (4/3/87 letter from R.E. Beumer of Sverdrup Corp. to Martin, Craig, Chester & Sonnenschein). See Exhibit H, attached.
- Produced by Patterson & Associates to Monsanto in November, 1994.
- (h) Patterson Exhibit 23: CER 178942 (4/26/89 memo to file from Jim Patterson). See Exhibit I, attached.

- Produced by Patterson & Associates to Monsanto in November, 1994.

3. During the deposition of Robert Conreaux on May 4, 1995 in the offices of Coburn & Croft, Mr. Ricci asserted that the attorney-client privilege covered document Renum 060833, an April 19, 1985 letter from Dr. Patterson to Terri Yasdick. See Exhibit J, attached.

- This document was produced to Monsanto by Cerro in November, 1993.
- This document was marked as Exhibit 56 to the deposition of Sandy Silverstein on April 24, 1995. Mr. Silverstein was questioned concerning the document and Cerro Copper raised no objection.

4. By this Motion, Monsanto does not admit that any of the above-referenced documents are privileged as attorney-client communications or protected by the work-product doctrine. This Motion does not address the merits of the underlying privilege claims because any such claims have been waived as set out herein.

5. Mr. Ricci argued that the foregoing documents were privileged, that they were "inadvertently produced", and that no privilege had been waived by their production.

6. Monsanto and Cerro have entered into a protective order in this case. See Exhibit K, attached. In paragraph 9 the Order states in pertinent part that "it is agreed that inadvertent production of privileged or attorney's work product documents or

information does not waive the attorney-client privilege or attorney's work product privilege if a request for return of such documents or information is made promptly after a party learns of its inadvertent production." (emphasis added).

7. As noted above, the documents described in paragraph 2(a)-(e) and paragraph 3 (Exhibits A-C, E, F, and J) were produced to Monsanto by Cerro Copper in October or November, 1993. Cerro attorneys had the opportunity to review each Cerro production for privilege. Cerro was aware of what it was producing to Monsanto and was under no special time constraints or other condition which would render the production inadvertent. See In re Intern. Harvester's Disp. of Wis. Steel Lit., 666 F. Supp. 1148, 1154 (N.D. Ill. 1987) (where counsel had screened files for privileged matter it must have known that they contained privileged communications and production of such documents cannot be characterized as inadvertent).

8. The documents described in paragraph 2(f)-(h) (Exhibits G-I) were produced to Monsanto in November, 1994, in response to a subpoena it issued to Patterson & Associates. Attorneys for Cerro Copper reviewed the documents before they were produced to Monsanto. See Exhibit L, attached (Patterson deposition, page 27). Again, there can be no inadvertent production where Cerro reviewed the documents and knew what was being produced.

9. Even if at the time of production the documents could be deemed to have been privileged but inadvertently produced, Cerro has waived any privilege claim by its inaction. Cerro has only

requested the return of one of the documents produced, and this request came almost one year after the production of the document.

10. Cerro's excuse for its belated assertion of the privilege as to Exhibit C is that at the time of production it was unaware of the facts and circumstances surrounding the preparation and purpose of the document. The document itself bears the fax line from Lowenstein, Sandler, Kohl, Fisher & Boylan, Cerro's attorneys. Surely it did not take Cerro a year to discover that the document may be potentially privileged. Cerro has only attempted to assert a privilege because of Monsanto's use of and reliance upon this document. This tactic should not be allowed.

11. The scope and volume of discovery, the time available for review of the documents by the party asserting the privilege, the adequacy of the party's procedures for review, the time taken to rectify the error, and the overreaching issue of fairness and protection of the privilege are the relevant factors in assessing whether a party can claim inadvertent production. Baxter Travenol Laboratories v. Abbott Laboratories, 117 F.R.D. 119, 121 (N.D. Ill. 1987). See also In re Intern. Harvester's Disp. of Wis. Steel Lit., 666 F. Supp. at 1154.

12. In this case, Cerro reviewed each production for privilege before Monsanto was granted access to the documents. While the number of documents is large, Cerro has not been under any special time constraints in producing documents to Monsanto.

Monsanto and Cerro have continuously cooperated in the exchange of documents in order not to unduly burden either party.

13. Most importantly, Monsanto has been in possession of six of the documents for eighteen months and three of the documents for six months. Monsanto attorneys have examined these documents thoroughly and have questioned Cerro witnesses about certain of the documents in deposition, with no objection from Cerro's counsel. To uphold a claim of inadvertent production at this late stage would be extremely unfair to Monsanto. Cerro's delay in claiming inadvertent production and Monsanto's use and reliance on the documents weigh heavily in favor of denying Cerro's claim of inadvertent production. See Baxter Travenol Laboratories v. Abbott Laboratories, 117 F.R.D. at 121 ("Where prior to the assertion of the privilege, the documents have been examined and used by the opposing party, it may be unfair and unrealistic to uphold the privilege").

14. Monsanto has scheduled the deposition of Henry Schweich, Cerro Copper's president, for June 8 & 9, 1995 and the deposition of Ray Avenet, a Cerro Copper consultant, during the week of June 12, 1995. Monsanto anticipates introducing into these depositions at least some of the documents that are the subject of this Motion. Monsanto also intends to introduce certain of these documents into evidence in the trial of this matter, set to begin September 11, 1995.

15. Because of Monsanto's intended use of these documents in upcoming proceedings, Monsanto seeks to resolve this issue of

privilege objections before Cerro asserts the objections again, and forces counsel and witnesses to waste time and resources.

16. Cerro, Patterson & Associates, and others have produced over 100,000 pages of documents to Monsanto. The circumstances surrounding the production of those documents are similar if not identical to those of the production of the documents specifically described in this Motion. Monsanto does not know which of these other documents Cerro may also claim are privileged but inadvertently produced. In order to preserve judicial resources, Monsanto asks that this Court order that documents which were reviewed by Cerro before production and which have been in Monsanto's possession for at least 90 days were not inadvertently produced, and that their production waived any claim of privilege the plaintiff may have asserted.

17. Cerro is simply attempting to shield documents unfavorable to it by claiming inadvertent production at the eleventh hour. Cerro should not be permitted to hide behind this claim where the circumstances clearly show that the production of these documents was not inadvertent in the first instance and where Cerro's delay in asserting the privilege and Monsanto's use of the documents have waived any claim of inadvertent production Cerro might have had.

18. Monsanto Company respectfully requests that pursuant to Fed.R.Civ.P. 37(a)(4), it be awarded its expenses incurred in the filing of this motion, including reasonable attorney's fees, if the Court issues the Order sought herein, and that it be

permitted to present evidence of those expenses after the Order is entered.

WHEREFORE, Monsanto Company prays that this Court issue an Order prohibiting Cerro Copper Products Company from asserting privilege objections to the admission of or questioning concerning the documents described in this Motion and for such further relief as this Court deems just and proper.

Respectfully submitted,

COBURN & CROFT

By: 

Kenneth R. Heineman

Joseph G. Nassif

Bruce D. Ryder

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St. Louis, MO 63101

(314) 621-8575

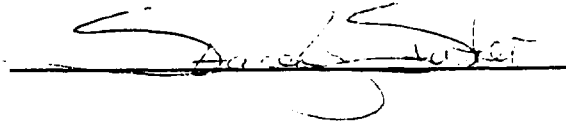
Attorneys for Defendant Monsanto
Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was sent U.S. Mail, first class postage prepaid, to the following this 16 day of May, 1995:

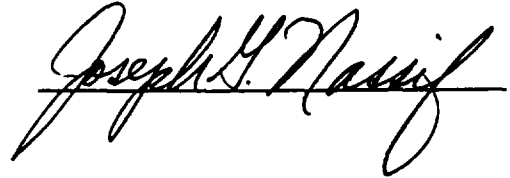
Richard F. Ricci, Esq.
Lowenstein, Sandler, Kohl, Fisher & Boylan
65 Livingston Avenue
Roseland, NJ 07068-1791

Alan C. Kohn, Esq.
Rebecca Stith, Esq.
Kohn, Shands, Elbert, Gianoulakis & Giljum
One Mercantile Center
24th Floor
St. Louis, MO 63101

A handwritten signature, likely of Alan C. Kohn, is written over a horizontal line. The signature is in cursive and appears to read "Alan C. Kohn".

CERTIFICATE OF GOOD FAITH ATTEMPT TO RESOLVE
PURSUANT TO LOCAL RULE 12(C)

I, Joseph G. Nassif, as one of the counsel for Monsanto Company, hereby certify that I have conferred in good faith with Richard F. Ricci, counsel for Cerro Copper Products, in an attempt to resolve the discovery matter presented by this Motion. Despite sincere efforts, the parties have been unable to resolve their differences respecting this matter. The conference took place in person in the offices of Coburn & Croft on May 9, 1995.

A handwritten signature in cursive script, reading "Joseph G. Nassif", written over a horizontal line.

12/4/85

Person Information
Signature RIF

Responsible
Party

- ## II POTENTIAL LIABILITY AS PRP - OVERVIEW

- A. WASTE DISPOSAL PRACTICES ✓
- B. LAND ACQUISITIONS ✓
- C. SITE TOUR ✓

IV FUTURE DIRECTIONS

TANDLER 72

59 8/15/94

RENUM 045486

C300-

EXHIBIT

A

0
0
0
0
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1

Baron Gilman + Jim Brown to B-6
By Dick Linder for "Thorn" report.

Frank Conditman - Adm. B-7
Jim P. to ex-1000
C-1000.

Work Plan
Formative Planning - Term of Action
to B-6: Will give action, answer to

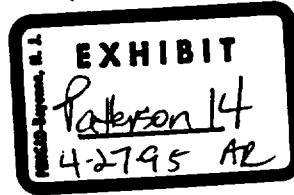
AT. ACHMENT A

Patterson Associates, Incorporated

April 21, 1987



Environmental
Consultants



Ms. Susan M. Franzetti
Martin, Craig, Chester &
Sonnenschein
55 W. Monroe - Suite 1200
Chicago, IL 60603

Dear Susan:

I am responding to your letter of 8 April 1987 regarding the recent soil analyses performed on Cerro samples. The levels of pollutants found are certainly cause for concern, and represent a mixture of contaminants typical of Cerro operations plus those associated with an organics plant such as Monsanto.

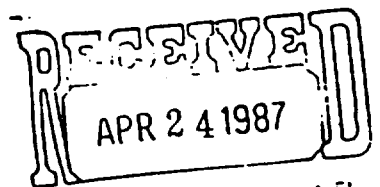
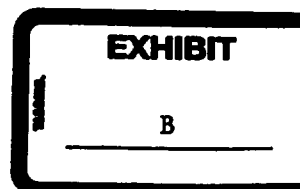
I am further concerned about the caveats expressed by the testing lab regarding their results, since there seem to be analytical laboratory (procedural) problems and/or unique analytical difficulties associated with the samples, themselves. I discussed this with Larry Oliver on April 16th, and emphasized to him that results obtained on our behalf from any laboratory must be such that we can have absolute confidence in them. Larry concurs with this, and will investigate what problems arose in Daily Analytical's work for us and report back to me.

Cordially yours,

J. W. Patterson, Ph.D.

JWP:aw

cc: Paul Tandler
Sandy Silverstein
Larry Oliver

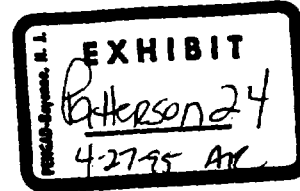


SVERDRUP ASSOCIATES
ENVIRONMENTAL CONSULTANTS

RENUM 044940

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D R A F T



DISCUSSION DOCUMENT

June 8, 1989

I. BASIC FACTUAL PREMISE

II. OBJECTIVES

- A. Long Term Objectives
- B. Short Term Objectives

III. BASIC ALTERNATIVE APPROACHES

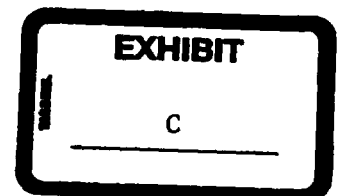
- A. Do Nothing With IEPA
- B. Negotiated Cooperative Relationship With IEPA
- C. Commitment to Full Area 1 Cleanup With IEPA

IV. ADDITIONAL CONSIDERATIONS

- A. Organize prp's for Collective Action on RI/FS for Area 1.
- B. Geo-political Solution for all Sauget Sites
- C. Develop Case Against Monsanto
- D. Take Initiative for Certain Unilateral Actions Without Express IEPA Agreement

V. RECOMMENDED ALTERNATIVE

- A. Option III-B Negotiated Cooperative Relationship with IEPA Combined with IV-D, Limited Unilateral Action at CS-A and Site I.



RENUM 044474

C295-8

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I. BASIC FACTUAL PREMISE

- There are more than 18 sites in the Sauget area that are contaminated as a result of historical filling, industrial discharges, and the like
- The groundwater in the entire area is substantially degraded
- These sites have the attention of IEPA and, to a lesser extent, USEPA as high priority concerns and IEPA will use its legal and administrative authorities to see that they are abated
- IEPA has grouped the sites it has investigated into two separate areas: Area 1 and Area 2
- Area 1 consists of sites designated Creek Segment A, Creek Segment B; Sites G, H, and I
- Cerro owns Creek Segment A, I, and a small portion of G
- Areas 1 and 2 will each qualify for listing on the National Priorities List (NPL) established under Superfund thereby qualifying, too, for federal money to effect cleanup and bringing USEPA into the process
- There is a tremendous range of outcomes for remediation and costs of remediation depending on such factors as:
 - the lead agency (IEPA or USEPA)
 - listing of the site on the NPL
 - who controls the process--industry or government
 - how cooperative industry is viewed by the agencies
- Cerro is legally liable for the conditions on the sites it owns. Others may also be liable, but Cerro bears the laboring oar of establishing the degree of their involvement and liability
- There are relatively few liable parties of any financial significance. Only Monsanto is a true deep pocket
- Monsanto appears to be primarily responsible for organic contamination within Area 1, but it will not likely accept such responsibility without convincing proof and will not likely participate in any cooperative venture involving substantial dollar outlay

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II. OBJECTIVES

A. Long Term Objectives

1. To develop cost-effective remediation of the sites for which Cerro has legal responsibility so as to minimize total long term cleanup costs and legal liabilities.
2. To obtain "fair share" financial contributions from all legally responsible parties to the costs of cleanup.
3. To maintain Cerro's good name in the community (to avoid bad press, public image, unnecessary litigation, etc.).

B. Short Term Objectives

1. To maintain initiative and control with industry rather than with the government.
2. To protect human health and safety and the environment from immediate threats or risks.
3. To avoid listing of Area 1 on the NPL

III. BASIC ALTERNATIVE APPROACHES

A. Do Nothing with IEPA

1. Advise IEPA that Cerro is not prepared to undertake any cooperative action at this time
2. IEPA completes scoring package
3. Sites proposed for listing on NPL
4. IEPA initiates administrative/judicial orders?
5. Sites "listed" on NPL somewhere between June 1990 and June 1991
6. EPA and/or IEPA involvement--through enforcement actions or Fund financed cleanup and then suit for cost reimbursement

Advantages:

- Not high profile/does not single out Cerro now
- Likely enforcement action v. Cerro and Monsanto and others later

- Even if Cerro targeted, may third-party in (in judicial enforcement) other parties
- Delays expenses for Cerro; no real expenditures for years

Disadvantages:

- Agency not in cooperative frame of mind for negotiation of remedy
- Bad publicity later when enforcement takes place
- Higher costs of strict NCP
- Serve dual masters - IEPA and USEPA
- Little flexibility on remedy selection; agency dictated result through formal Superfund process
- Delay may mean greater costs later
- Loss of meaningful input and control of process
- Risk of treble damage in enforcement actions

B. Negotiated Cooperative Relationship with IEPA

- Affirm Cerro's willingness to enter into an agreement with IEPA.
- IEPA to commit to:
 - Defer seeking Superfund listing of Area 1
 - Use its administrative and legal powers to assist Cerro in a) persuading other parties to cooperate voluntarily; b) perfecting Cerro's legal claims against other parties

Cerro to commit to follow IEPA's basic program of formal investigation of the sites (RI/FS)

Key Negotiating Issues:

- Area 1 or only Cerro owned sites within Area 1
- No commitment at this time to implementation of a remedy
- No requirement that groundwater is to be addressed in this way; groundwater is to be addressed regionally

- Flexible remedy selection process
- Extent of IEPA's willingness to use its powers on Cerro's behalf against others:
 - Information demands
 - Notice letters
 - Orders under § 4(g)
 - Public money in part

Advantages:

- Seizes initiative
- Creates goodwill and possibly greater flexibility in dealings with IEPA
- May avoid NPL (deferred)
- Enforcement assistance from IEPA vis-a-vis other parties to increase negotiating position
- Establishes conditions precedent to assist liability of Monsanto now; allows suits in contribution against Monsanto and others

Disadvantages:

- Requires upfront expenditures of substantial dollars to perform formal RI/FS (\$750,000 to \$1.5 million)
- Cerro is out front publically. Publicity may not be uniformly favorable
- IEPA still in "control" of significant aspects of the process
- May require commitment to remedial action; as a practical matter creates great expectation that Cerro will do so; leads to Cerro being main target of enforcement if it refuses
- Excuses efforts of other parties (Monsanto); not likely to secure financial contribution without lengthy lawsuit

Timetable:

- Negotiate Administrative Consent Order and Technical Scope of Work (6/89 - 12/89)

- Obtain technical approval of work plan (9/89 - 12/89)
- Perform work 9 to 18 months depending on scope of undertaking
- Governmental review and comment will add additional 6-9 months
- Completed RI/FS (12/91 - 3/92)

C. Commit to Full Area 1 Cleanup with IEPA

- Agree to sign-up now for full formal investigation (RI/FS) and remediation of Area 1 with IEPA under "form" Consent Order, subject only to reservation of rights vis-a-vis other parties

Advantages:

- Actions begin promptly
- Agency will be cooperative and highly pleased
- Cerro gains good corporate citizen image vis-a-vis IEPA

Disadvantages:

- Cerro placed in high profile
- Agreement is a blank check for costs that may be in the \$50-100 million range
- Cerro must still pursue claims against others
- Obligations assumed disproportionate to legal responsibility in fact

Timetable:

- Negotiated agreement 7/89
- RI/FS process-with government approval and oversight (7/89 - 7/91)
- Remedy selection 10/91 - 12/91
- Public comment 3/92
- Remedy design 9/92 - 12/92
- Remedial action begins 1/93

IV. ADDITIONAL CONSIDERATIONS

A. Organize prp's for Collective Action on RI/FS for Area 1

Advantages:

- Spreads costs among parties
- Diffuses high profile for Cerro
- Gains initiative; asserts control
- Brings Monsanto into process (presumably) early

Disadvantages:

- Little success to date; high likelihood of failure--no motivating imperative for others
- Takes time and resources without much chance of success
- Few prp's with assets anyway
- IEPA impatient not willing to defer for very long, may lead to Do Nothing Alternative by default

B. Geo-Political Solution for All Sauget Sites

- Discussion at highest levels of government or the proposition that Sauget is unique - built on industrial fill to provide industrial base to area in need of jobs and ratables
- Sauget cannot be cleaned up; can only prevent harm to individuals, properties and resources (river; groundwater) outside of area

Advantages:

- Industry works together; avoid Cerro high profile
- Least cost remedies result

Disadvantages:

- Little likelihood of success but very resource intensive to try to achieve
- Virtually no precedent; politically unpopular; can create backlash

- Probably will result in NPL listing and USEPA directed cleanup

C. Develop Case Against Monsanto

- Document legally and technically Monsanto's contribution to and legal responsibility for Area 1 sites

Advantages:

- Builds case against one sure deep pocket
- Useful leverage in negotiation
- Necessary anyway for legal claims for contribution

Disadvantages:

- Resources required--time/money
- Monsanto will learn of effort; may react negatively; lose cooperation in other areas--sewerage authority

D. Take Initiative for Certain Unilateral Actions Without Express IEPA Agreement

1. At CS-A

- Reroute water and sewerage flows
- Cap and/or stabilize sludges
- Hold for possible disposal on and offsite (land disposal; incineration)

2. At Site 1

- Perform additional investigations to develop data necessary for cost estimates of feasible remedial actions

Advantages:

- Cerro in control of process
- Information needed for informal management/legal decisionmaking
- Minimizes risks of injury from CS-A; avoids criticism that Cerro did nothing to address continued contamination of groundwater

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- May have technical benefit for later, more complete remediation (e.g., may dewater Dead Creek sediments so they are more amenable to treatment or disposal later)

Disadvantages:

- Upfront costs without any "credit" from Agency for efforts
- Work may be duplicated in formal process; may be inconsistent with long term remedies
- Permitting requirements may prohibit or greatly delay some options (e.g., wetlands § 404 permits, flood control permits, hazardous waste treatment or storage permits)
- May establish adverse precedents for certain remedies (remediation); may lead to wider agency demands--e.g., CS-B or Areas G and H
- May affect cost recovery action in contribution against Monsanto and others to extent inconsistent with NCP

V. RECOMMENDED ALTERNATIVE

- A. Option III-B Negotiated Cooperative Relationship with IEPA Combined with IV-D, Limited Unilateral Action at CS-A and site I.

1. Best meets objectives at lowest cost to Cerro.

- Gives Cerro control to influence selection of cost-effective remedy
- Coopts IEPA to assist Cerro to obtain fair share from others
- Gains goodwill and good reputation for Cerro
- Avoids listing on NPL
- Protects human health and environment
- Limits Cerro involvement to a degree more commensurate with its extent of legal liabilities

LOWENSTEIN, SANDLER, KOHL, FISHER & BOYLAN

A PROFESSIONAL CORPORATION

COUNSELLORS AT LAW

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September 28, 1994

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JOHN R. MACKAY 2ND
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WILLIAM J. VONDERHEIDE
EDWARD T. ARNOLD
THOMAS E. MESEVAGE
JOYCE A. DAVIS
MICHAEL DAVID LICHTENSTEIN
HOWARD A. MATALON
ALICE K. SMALL
BRIAN WEEKS
VERONICA SMITH LEWIS
EDWARD M. ZIMMERMAN
AMY C. GROSSMAN
RICHARD A. LEVITAN
MAUREEN E. MONTAGUE
GAVIN J. ROONEY
JEREMY I. SILBERMAN
CHRISTOPHER L. WEISS
CHARISSE A. CARNEY
NELSON D. JOHNSON
ABBY J. AGES
KEVIN G. CORLUS
TINA MARIE NICHOLD
SHERYL A. BERNSTEIN
DAVID J. BIANCHI
LAUREN M. HOLLENDER
MYLA KAPLAN
ELENA FRANCESCA RAND
PATRICK J. WHALEN
SARAH GODFREY HUNT
SARAH B. LEVINSON*

*FL BAR ONLY

Bruce D. Ryder, Esq.
Coburn & Croft
One Mercantile Center
Suite 2900
St. Louis, Missouri 63101

Re: Cerro Copper Products Co. v. Monsanto Company
Civil Action No. 92-CV-204-WDS

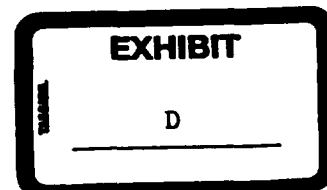
Dear Mr. Ryder:

Please be advised that it has recently come to our attention that during the course of discovery, we inadvertently produced a document that is protected from disclosure by the attorney-client privilege and the work product doctrine. This document bears bates number C00295-8 and was marked as Exhibit 100 at the deposition of Paul Tandler on August 16, 1994.

At the time of Cerro's document production and at the time of Mr. Tandler's deposition, we were unaware of the facts and circumstances surrounding the preparation and purpose of this document. We have recently confirmed, however, that this document was prepared by Lowenstein, Sandler, Kohl, Fisher & Boylan for the purpose of providing advice and counsel to Cerro and in anticipation of litigation. Therefore, it is protected by the attorney-client privilege and the work product doctrine.

Accordingly, we hereby withdraw that document, and request that you return

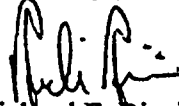
003035



September 28, 1994

it to us. In addition, please be advised that we will not permit any further questioning of Cerro witnesses regarding this document and will object to its further use in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ricci", with a stylized flourish at the end.

Richard F. Ricci

RFR:ljc

cc: John M. Nolan, Esq.
Michael L. Rodburg, Esq.

002336

Patterson Schafer, IncorporatedEnvironmental
Consultants

July 26, 1989

Ms. Susan Franzetti
Gardner, Carton & Douglas
Suite 3400 - Quaker Tower
321 North Clark Street
Chicago, Illinois 60610-4795

Re: Cerro/Sauget - Storm Water Impoundment

Dear Susan:

As you are aware, we are working on a project at Cerro to consolidate and repipe stormwaters to the village sewer. The project, as envisioned, would propose to construct an interim lined stormwater impoundment on Cerro property, to allow storm surge to be drained to the village sewer at acceptable rates. We understand that Dead Creek Segment 'A' may occasionally serve such a purpose now, but other efforts will result in its becoming unavailable shortly.

We would appreciate your evaluation of the need for a permit to either construct or operate the new interim impoundment, which will be taken out when the village installs additional stormwater handling capacity. As far as we know, no specific permit has been required for current practice.

Please call if you have any questions.

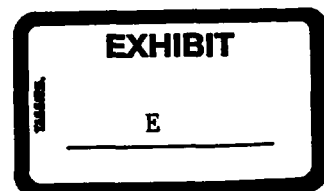
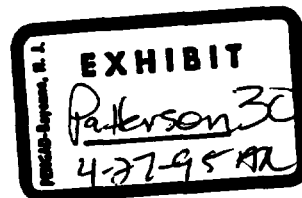
Cordially,

Carl J. Schafer

CJS:dmj

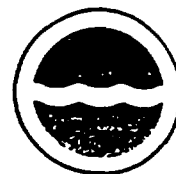
cc: J. W. Patterson
F. Tandler
J. M. Grana

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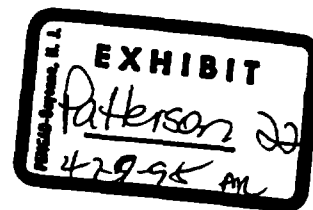
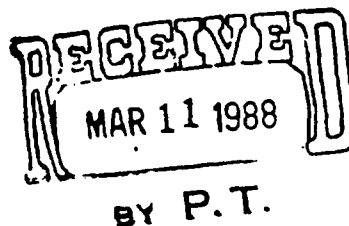
Patterson Schafer, Incorporated



Environmental
Consultants

March 8, 1988

Richard J. Kissel
Martin, Craig, Chester &
Sonnenchein
55 W. Monroe Suite 1200
Chicago, IL 60603



Dear Dick,

As we discussed at Cerro/Sauget last week, I have prepared a "strawman" agenda and backup notes for Paul Tandler's use in the March 11th ad hoc "PRP" organizing committee meeting. They are forwarded for your comment, which, in the interest of time I request you make directly to Paul. I am also sending this package to Paul in draft to give him the greatest possible lead time in preparing for the meeting.

Cordially,

Carl J. Schafer

CJS:sm

cc: Paul Tandler - Cerro/Sauget



DRAFT

PROPOSED DISCUSSION AGENDA
FOR THE
AD HOC ORGANIZATIONAL WORKING GROUP
OF THE
SAUGET AREA COOPERATIVE CLEANUP EFFORT

1. Purpose or objective of Ad Hoc Group
2. Is initial scope of interest study, or does it include cleanup?
3. What is the organizational concept?
4. What shall be the product(s) of the Ad Hoc Group?
5. How will the Ad Hoc Group generate products? When?
6. How will Ad Hoc Group recommendation (products) be ratified?

003939

RENUM 044742

DISCUSSION OPTIONS
FOR THE
AD HOC ORGANIZATIONAL WORKING GROUP
OF THE
SAUGET AREA COOPERATIVE CLEANUP

1. Clarifications

- . as ad hoc group, has limited charter from the industrial community
- . time is of the essence
- . need reportable products
- . everyone is busy - therefore

2. Major issues

- what is the job (how do we know when we're done?)
- how to get it done

3. What is the job

Option a) to draft a detailed, formal organizational approach, including state of candidates, agnedas, contractors, timetables, etc.

b) to propose organizational concepts, strategies, policies - identify key initiation function and modis operandi, leave details of implementation to the support resources.

Discussion:

Option a) will probably produce the biggest immediate "bang for the buck". A concentrated and focussed effort, working under startup enthusiasms could put in place a broad ranging program designed to produce immediate results. It will also require significant resources by the Ad Hoc group, or else costly contractor effort. In addition, the high visibility

fast moving approach can produce backlash reactions among the industrial community, and even from IEPA and the media.

Option b) is more deliberative, lower keyed, consensus building approach. With limited objectives, the Ad Hoc Group is less likely to overreach its charter, especially as regards resource/expenditure commitments. It will produce fewer results but faster.

Recommendation: Option b) A strictly limited charter, less initial effort required, mere consensus building approach is consistent with the progress to date, and the group interests.

4. How to get it done-

Option a) do everything in house

Option b) employ significant contract assistance

Option c) none of the above

Discussion: If the product of the Ad Hoc Group is to be conceptual/strategic/policy, then more limited rather than expansive resources should be identified, based on the proposition that "needs expand to fill the resources".

Recommendation: Option c) but more like a) than b) - defer decision until end of first meeting.

5. The organizational concept: policy topics tha will lead to the organizational concept include:

- . Who's in charge?
- . Who makes decisions, or how are they made?
- . How are decisions to be carried at?
- . What degree of obligation to the group by individual members?
- . How will issues be identified?
- . How will issues be staffed?
- . How will the program be funded?

6. Conceptual products:

- 1 . a resolution of intent (for signatures)
- 2 . an organizational concept
- 3 . a leadership selection process
- 4 . initial areas of effort, products, actions needed
- 5 . a timetable

7. The resolution of intent is designed to identify the scope of cooperation, and demonstrate commitment to it. Not more than 2 pages (plus signatures) for statements of principal, intent, commitment to environmental cleanups or study of hazardous waste buried or contaminating etc. etc. - is it just the PA/SI and RI/FS, or will it include specific commitment to cleanup?

8. The Organizational Concept is designed to promote cooperation and achievement through a "chain of equals in command" who report to but are part of the total participating group; as follows:
- . There could be an executive secretariat who is responsible, under the administrative leadership of an executive secretary for day-to day initiation of assignments and reports etc. Composed of industry, staffed by industry and/or consultants.
 - . the executive secretary would be The Chief Operating Officer of the group.
 - . Reporting to the secretariat are "subject working groups" dealing with major interest areas, eg "allocation of costs", "sampling and analytical requirements", identification of PRPs", "funding", "regulatory liaison", "public relations", etc. Each headed by industry, staffed as leadership deems appropriate.
 - . Could envision other working groups of disciplinary interest, ie, legal oversight, technical oversight.
 - . The group who signed (or later subscribe) to the resolution of intent constitute the "council" to whom the executive secretariat reports. The council could be chaired by a separately selected chairman whose duties are largely public.
9. The leadership selection process becomes finding one person to serve as executive secretary. That person must then recruit his secretariat and support resources, produce process/decision SOP's, obtain ratification etc from the council, cause selection of chair etc. etc.. The job is to "bootstrap" the mechanism.
10. Initial areas of effort etc. - pretty well covered above.
11. Timetable - self explanatory

DRAFT

12. So - the ad hoc group should produce

- . a draft resolution of intent
- . a written organizational concept
- . a candidate for executive secretary
- . a list of initial activities
- . a timetable
- . (although not discussed, an initial operating budget should also be considered.

Finally the ad hoc group must report back to the larger group (The "Council") for ratification, adoption, further instruction.

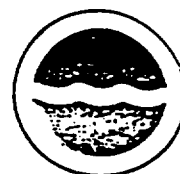
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RENUM 044746



FYI &
PITCH

Patterson Schafer, Incorporated



Environmental
Consultants

July 24, 1989

Mr. Robert W. Webb
Vice President and General Counsel
The Marmon Group, Inc.
225 West Washington Street, 19th Floor
Chicago, Illinois 60606

Dear Bob:

I enclose a copy of the schedule of activities at Cerro on Dead Creek and Site I. We held a meeting at Cerro on July 21, 1989, and are on schedule with the project. Please note that Activity IV C is a decision meeting regarding how to proceed on Dead Creek, based upon the Activity III sediment characterizations studies plus Ray's evaluation of these results, and Mike Rodberg's initial liaison with IEPA.

It was suggested that you may want to hold a pre-meeting to prepare for the "decision meeting" with Bob Pritzker. Hank Schweich will be out of the country from early September until mid-September and suggested Tuesday, September 19th for a pre-meeting, if one is to be held. Since there are a number of participants who would be involved in such a pre-meeting, you may want to get it on people's calendars as soon as possible.

Cordially yours,

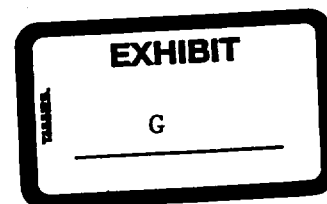
James W. Patterson, Ph.D.

JWP:dmj
Enclosure

cc: Henry Schweich
Mike Rodburg
Ray Avendt
Paul Tandler

CER 182137

890012.1



PROGRAM OVERVIEW
DEAD CREEK SEGMENT A & SITE I

<u>ACTIVITY</u>	<u>Dates</u>	
	<u>Start</u>	<u>Finish</u>
I. Security and Surveillance (Cerro)	6/12/89	12/31/89
A. Install Fence	6/12/89	8/30/89
B. Install TV Surveillance	6/12/89	12/31/89
II. Site Preparation (Cerro)	6/12/89	8/1/89
A. Clear Debris, Brush	6/12/89	7/31/89
1. For immediate access	6/12/89	7/2/89
2. Remaining areas	7/3/89	8/1/89
III. Sediment Characterization (Aventt)	6/12/89	9/15/89
A. Prepare Sampling/Analytical Plan	6/12/89	7/31/89
B. Collect/Analyze Samples	7/6/89	8/24/89
C. Prepare Report	8/26/89	9/15/89
IV. Program Review	7/5/89	10/6/89
A. Identify Alternatives (Aventt)	9/5/89	9/20/89
B. Regulatory Liaison (Rodberg)	7/5/89	10/6/89
C. Decision Meetings (Webb)	9/20/89	10/6/89

ACTIVITYDates
Start Finish

V.	Sediment Removal	9/29/89	4/26/90
A.	Engineering & Regulatory Compliance	10/4/89	12/31/89
1.	Plan & design (Aventdt)	10/4/89	12/4/89
2.	Permit application (Rodberg)	10/4/89	12/4/89
3.	Mobilization (Aventdt)	12/3/89	1/2/90
B.	Implementation (TBD)	1/7/90	6/5/90
1.	Excavate	1/7/90	4/23/90
2.	Store	1/19/90	5/21/90
3.	Transport	2/23/90	5/28/90
4.	Dispose	3/16/90	5/26/90
5.	Backfill	5/4/90	6/21/90
VI.	Quantify Site "I" (Aventdt)	7/31/89	12/14/89
A.	Install and Synoptic Sample Groundwater Cluster Wells	7/31/89	10/11/89
B.	Take Core Samples, Analyze Deep/Middle Sediments	7/31/89	11/17/89
C.	Prepare Report	11/3/89	11/29/89
D.	Initiate Quarterly GW Monitoring	10/31/89	12/30/89
VII.	Reroute Plant Flows (Patterson)	8/1/89	1/6/90
A.	Repipe, Hard Connect East Outfall	8/1/89	1/6/90
B.	Eliminate Sauget Inflow Capabilities	8/1/89	1/6/90
C.	Reroute Piped Stormwater Flows	8/1/89	1/6/90

6-28-89

890012.1

DEAD CREEK A -IRM / SITE I WASTE QUANTIFICATION

Page: 1

ACTIVITY ID	RD	PCT	TITLE	EARLY START	EARLY FINISH	TF
A100	0	0	Start of Project	12JUN89A	12JUN89	374
B200	80	0	I - Security and Surveillance	12JUN89A	30AUG89	6
B210	50	0	Install Fence	12JUN89A	31JUL89	0
B220	80	0	Install TV Surveillance	12JUN89A	30AUG89	6
C300	50	0	II - Site Preparation	12JUN89A	31JUL89	81
C310	50	0	Clear Debris, Brush	12JUN89A	31JUL89	81
C311	21	0	For Immediate access	12JUN89A	2JUL89	0
C312	30	0	Remaining Areas	3JUL89	1AUG89	0
D400	96	0	III - Sediment Characterization	12JUN89A	15SEP89	279
D410	24	0	Prepare Sampling/Analytical	12JUN89A	5JUL89	12
D420	50	0	Collect/Analyze Samples	6JUL89	24AUG89	12
D430	53	0	Prepare Report	26JUL89	16SEP89	12
E500	31	0	IV - Program review	5SEP89	5OCT89	4
E510	16	0	Identify Alternatives	5SEP89	20SEP89	4
E515	28	0	Regulatory Liaison	5SEP89	2OCT89	4
E520	14	0	Decision Meeting	20SEP89	3OCT89	4
F600	210	0	V - Sediment Removal	29SEP89	26APR90	5
F610	89	0	Engineering and Reg. Compli	4OCT89	31DEC89	4
F611	62	0	Plan and Design	4OCT89	4DEC89	4
F613	62	0	Permit Application	4OCT89	4DEC89	4
F614	31	0	Mobilization	3DEC89	2JAN90	4
F620	150	0	Implimentation	7JAN90	5JUN90	0
F621	107	0	Excavate	7JAN90	23APR90	0
F622	123	0	Store	19JAN90	21MAY90	0
F623	95	0	Transport	23FEB90	28MAY90	0
F624	72	0	Dispose	16MAR90	26MAY90	0
F625	49	0	Backfill	4MAY90	21JUN90	0
G700	85	0	VI - Quantify Site "I"	21SEP89	14DEC89	7
G710	21	0	Install Cluster Wells	21SEP89	11OCT89	7
G720	38	0	Core Samp. Deep/Mid. Sedime	12OCT89	18NOV89	7
G730	27	0	Prepare Report	3NOV89	29NOV89	47
G740	62	0	Synoptic Groundwater Sampli	30OCT89	30DEC89	7
H800	159	0	VII - Reroute Plant Flows	1AUG89	6JAN90	0
H810	159	0	Repipe, Hard Connect East O	1AUG89	6JAN90	0
H820	159	0	Eliminate Saugnet Inflow Cap	1AUG89	6JAN90	0
H830	159	0	Reroute Piped Storm Water F	1AUG89	6JAN90	0

CER 182140

Sverdrup
CORPORATION

801 North Eleventh
St. Louis, Missouri 63101

314 436-7600



April 3, 1987

Martin, Craig, Chester &
Sonnenschein
55 West Monroe Street
Chicago, Illinois 60603

Gentlemen:

Subject: Cerro/Sverdrup Meeting of April 1, 1987
Regarding IEPA Dead Creek Project

In accordance with our discussions with Paul Tandler and Sandy Silverstein, we were asked to consolidate our thoughts on the ongoing IEPA Dead Creek Project and the probable hazardous material located on Cerro's property. We also were asked to discuss the regulatory and technical options available for the site's remedial cleanup. To assist in our effort, Cerro provided a copy of the IEPA's August 4, 1986, Ecology & Environment revised RI/FS proposal for the Dead Creek Project.

The principal issue discussed was; if Cerro wishes to take a proactive position and cleanup possible hazardous materials on their property:

1. can they accomplish this in accordance with the State of Illinois hazardous waste landfill guidelines;
2. can they do so under RCRA law;
3. is a CERCLA/SARA remedial approach the most likely possibility; and,
4. what type of phased programs for investigation, engineering and remedial construction would be necessary, and how much might it cost.

Sverdrup has reviewed Cerro's proactive position in accord with present regulatory requirements and has drawn the following conclusions. It is clear that the site cannot be closed under state industrial waste landfill guidelines because it was never permitted for that use. It also cannot be remediated under the RCRA provisions because it has not been operated or permitted before or after November 19, 1980 as part of the Sauget waste treatment facility. Since the site appears to contain significant hazardous materials, the CERCLA regulations apply and appear to be the only vehicle under which remediation/cleanup can occur. (See the enclosed telecon memos for specific discussions with EPA and IEPA.)

EXHIBIT

CER 171913003948

Martin, Craig, Chester &
Sonnenschein
April 3, 1987
Page 2

After reviewing the supplied revised scope of work for the IEPA RI/FS, we are left with the impression that IEPA recognized the possibility that the Dead Creek Project could get listed on the National Priorities List (NPL) because of the increased funding of Superfund. We concur with Cerro that it appears IEPA redirected the scope of the project to increase the site's chance of attaining NPL status. As stated in the revised scope of work, placement on the NPL would cause Superfund (federal) monies to be made available for the necessary remedial activities, including identifying and evaluating alternatives. It would also put pressure on responsible parties to participate in and provide monies for remedial activities.

The revised scope of work focuses attention on two separate sites within the project area, each consisting of multiple sites identified in the original scope of work. The areas are identified as the Mississippi River site and the Dead Creek site. Monsanto appears to be the Potentially Responsible Party (PRP) for the Mississippi River site, and Cerro appears to be the identified PRP for the Dead Creek site.

It is our initial impression that the identification and listing of two independent sites, instead of a single large site covering all the study area may benefit Cerro. It may allow Cerro to initiate action in the Dead Creek site independently of Monsanto. Monsanto may have significant exposure in the Dead Creek site, but it may be of advantage for Cerro to individually identify this exposure rather than attempt to do so through a joint agreement with Monsanto. To aid in evaluating this option in comparison to Cerro's considered proactive position, and to respond to Cerro's express interest to "scope out" a program for the site's remediation, Sverdrup would offer the following multiphased program:

Phase I An extensive records search

CER 171914

Phase II Conduct a remedial investigation to adequately define the extent of contamination

Phase III Perform a feasibility study to select remedial options with associated costs

Phase IV Construction management of the selected remediation option.

*Must be done
under IEPA
oversight*

An extensive record and history search is necessary to determine the type and source of contaminants at the site. One of the main objectives would be to locate waste sources and potential responsible parties. Documenting the history of response action that has occurred to date is also important to establish the current base on which to build any additional field investigation. A record of the past events to facilitate State and Federal Agencies to recover costs from any respon-

003949

Martin, Craig, Chester &
Sonnenschein
April 3, 1987
Page 3

sible parties is also necessary. The cost of a record search of this magnitude is estimated at \$10,000 to \$20,000. It should take approximately two (2) months to collect, review and compile the data.

During the record search, a work plan to complete the remedial investigation of soil contamination on the Cerro property will need to be prepared. It is anticipated that IEPA will conduct further investigation into the groundwater contamination throughout the entire Dead Creek site, and will not desire a separate study on just the Cerro property. It is estimated an investigation into the amount, type and impact of soil/waste contamination could cost approximately \$600,000 to \$800,000. A study would consist of borings and sampling in Dead Creek as well as the fill area. Some monitoring wells are also foreseen to investigate the type of material migrating from the area and its mobility in the soil. An investigation such as this should take six to seven months to complete. The approval of plans is required by IEPA and could delay a project by several months.

The remedial investigation would be tailored to produce a data base sufficient to develop a feasibility study. Potential remedial options would be evaluated based on numerous criteria including practicality, waste mitigation effectiveness, and cost. (The impact of a no action option would also be evaluated.) Utilizing the feasibility study, a clean up option would be selected. A feasibility study for this type of project is estimated to cost approximately \$100,000 to \$300,000 and could possibly be completed in six to eight months. Again developing the selected option in conjunction with the IEPA could greatly extend this time period.

The remedial option to be selected, of course, depends on many factors including the type of contamination, the physical characteristics of the site and, most importantly, the effectiveness of the method. Two options envisioned as methods of remediation are 1) encapsulating the area of contaminants and, 2) excavation with treatment/disposal of the material.

Option One

Encapsulating the area would involve the construction of slurry walls as a barrier against future migration, dewatering the enclosed area to reduce the possibility of future migration, and covering the area with a synthetic liner and a soil cap to prevent infiltration of precipitation. Areas of gross contamination could be excavated and disposed of by incineration. Assuming the area east of and including Dead Creek may require enclosure and only 4,000 cubic yards excavated, the design and implementation of a project such as this may cost an estimated \$5 to 7 million. Design and construction should take ten (10) to twelve (12) months.

CER 171915

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Martin, Craig, Chester &
Sonnenschein
April 3, 1987
Page 4

Option Two

Excavation of the fill area east of Dead Creek and the sediment in the creek followed by incineration of the contaminated material is estimated to cost between \$16 and 18 million including design and construction management. It was assumed that approximately one-quarter of the removed material would require treatment (approximately 89,000 yd³). Once incinerated, utilizing a mobile incinerator, the residual will require disposal into a hazardous waste landfill. If there are materials at the site that can be accepted by a landfill without prior treatment, they would be disposed of in this manner. Materials excavated and found not to be hazardous could be replaced into the area as permanent fill. Additional fill might be required for final cover and to return the site to desired grade. It is anticipated the a portion of Dead Creek on the site may be eliminated. Design and construction for this option could take twelve (12) to fifteen (15) months.

The final option or combination of options for remediation will eventually depend on the results of the site's RI/FS and additional work performed at the request of IEPA. The investigation and cleanup of groundwater was not considered in the above costs and will be an additional cost that must be considered. At this time the full extent of groundwater contamination is not known and a reasonable cost estimate is not available.

We believe that Cerro's proactive position merits attention and presents a good business decision, i.e. eliminate the source of surface contamination and quantify and limit the associated costs for cleanup. The added opportunity exists to utilize regulative/legal means to recover from other PRPs Cerro's direct cost and associated business costs to remediate the site.

Sverdrup is prepared to continue to assist Cerro Copper in its effort to be a responsible community member. Also, We believe we are qualified to support Cerro because we have an indepth knowledge of the Sauget facility and can represent the interests of Cerro. Further, Sverdrup has undertaken a range of hazardous waste projects of value from ten (10) to twenty (20) thousand dollars for site investigations to \$20,000,000 remedial investigation and construction efforts. Of specific interest are the following hazardous waste projects:

Dupo, Illinois

CER 171916

Negotiated IEPA site assessment and RI/FS for hydrocarbon based products, cyanides, and possible dioxins. Investigated site characteristics, surface contamination, subsurface investigations including groundwater contamination and potential sources.

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Martin, Craig, Chester &
Sonnenschein
April 3, 1987
Page 5

Mobil Oil Company, Oregon

Groundwater recovery well system, slurry wall construction, and containment of contaminants from a nearby river.

Carlinville, Illinois

Negotiated IEPA site assessment (RI) for spent solvents near machinery repair areas. The level of concentration and extent of contamination were determined for a Fortune 500 petroleum company's minerals/coal division.

Baltimore, Maryland

\$3 million contaminated site cleanup; characterization of one million cubic yards of contaminated soil, engineered its remedial design and excavation, as well as the groundwater treatment facility.

Warren County, North Carolina

Engineering, design, and construction management for 40,000 c.y. of PCB contaminated soil with placement in a landfill. This project represented the removal of a site from the EPA's National Priority List, and represents the remediation of one of only six Superfund site to be cleaned up.

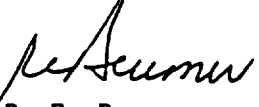
We have enclosed our statement of qualifications to provide a more detailed discussion of these and other projects.

As stated above, the suggested course of action and phased scope of work with associated cost estimates are predicated upon a limited amount of site information, review of the E&E proposals to the IEPA, and professional assumptions. A more precise remedial cost could be developed at the conclusion of the suggested RI/FS.

We would welcome the opportunity to discuss the outlined program and possible remedial options available to Cerro, and to improve the accuracy of our estimates of cost and time.

Very truly yours,

SVERDRUP CORPORATION


R. E. Beumer
Senior Vice President

Enclosures (2)

cc: Paul Tandler/Sandy Silverstein
Cerro Corral, Puerto Rico

CER 171917

003952

Patterson Associates, Incorporated



Environmental
Consultants

April 19, 1985

Ms. Terri Yasdick
Martin, Craig, Chester
& Sonnenschein
115 South LaSalle Street
Chicago, Illinois 60603

Dear Terri:

During my site visit to Cerro on April 12, 1985, I noticed a few items which should be corrected. I mentioned these items to Sandy Silverstein during my visit. The items are as follow.

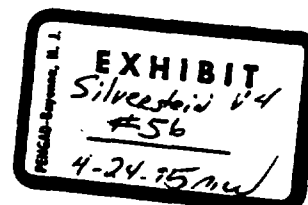
1. There appears to be some spillage of chromating rinse water from a plating operation, directly onto the ground.
2. The contents of the Iron Tanks frequently slop over onto the ground, at the east end of the Tanks.
3. There is an overturned and crushed drum apparently containing wastes on the ground near Manhole #1, which is washing into the sewer.

Sandy concurred with the need to correct these items, and I am sure will proceed to do so.

Cordially yours,

J. W. Patterson, Ph.D.
President

cc: Paul Tandler
Sandy Silverstein✓



IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

CERRO COPPER PRODUCTS CO.,

Plaintiff,

v.

MONSANTO COMPANY,

Defendant.

Civil Action No.
92-CV-204-WDS

**CONSENT PROTECTIVE ORDER REGARDING
PRODUCTION OF CONFIDENTIAL INFORMATION**

Plaintiff Cerro Copper Products Co. ("Cerro"), and Defendant Monsanto Company ("Monsanto") having stipulated that a Protective Order should be entered pursuant to Fed. R. Civ. P. 26(c) to maintain the confidentiality of certain information and materials to be exchanged between the parties, and it appearing to the Court that such a Protective Order is necessary, appropriate, and will facilitate discovery;

IT IS ORDERED that:

If in the course of the proceedings in this action a party (the "Producing Party") is required or undertakes to disclose or supply confidential business or technical or scientific information or material, the following procedure shall be employed:

1. All information or material which is believed to contain confidential matter supplied by the Producing Party to any other party shall be marked or otherwise designated as being "CONFIDENTIAL 92-CV-204-WDS." For purposes of this paragraph such marking or designation shall be as follows:

EXHIBIT

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(a) A document believed to contain any confidential information shall be so marked on every page believed to contain any confidential information.

(b) Information in the form of an oral deposition can be designated as being confidential at the commencement of the deposition, or at any time any question is asked which may elicit an answer containing confidential information.

(c) Information contained or embodied in a form other than writing, such as samples, films, tapes, apparatus, drawings, graphs, pictures and the like shall be designated as being confidential by affixing a tag or label to the item conspicuously bearing the above specified notation.

(d) Information which becomes available to any party via inspection, measuring, analyzing, or testing of any sample or thing marked as provided in paragraph (c) received from another party or prepared by utilizing confidential information supplied pursuant to this Protective Order shall also be considered to be confidential without need for additional designation by the party supplying the sample or thing or information.

(e) There shall be no confidential designation with respect to any document or thing except in the good faith belief that the document or thing contains confidential subject matter.

2. All confidential information or material supplied by any party to this action which is marked or otherwise designated confidential in accordance with paragraph 1 shall be used solely for the purposes of this litigation and shall be kept in

confidence, and shall not be disclosed by the Receiving Party without prior written consent of the Producing Party or by further Order of the Court to anyone other than this Court, except as provided herein.

3. Access to marked or designated confidential information and material in the possession of the Receiving Party may only be given by the Receiving Party to the following persons, provided that they agree to be bound by the terms of this Protective Order:

(a) In-house and outside counsel directly involved in this action and their legal or paralegal assistants and stenographic or clerical employees;

(b) Employees or former employees of Cerro and/or Monsanto whose access to the marked or designated confidential information and material is reasonably deemed in the good faith judgment of counsel for the Receiving Party to be essential for the conduct of the litigation and provided the individual signs a Confidentiality Agreement in the form attached hereto;

(c) Independent experts retained by a party or specifically employed by counsel to furnish technical or expert services in this litigation, provided that the services of such experts are reasonably deemed in the good faith judgment of counsel for the Receiving Party to be essential for the conduct of the litigation and provided the expert signs a Confidentiality Agreement in the form attached hereto; and

(d) Court personnel and court reporters and typists recording or transcribing testimony.

4. All transcripts, depositions, exhibits, answers to interrogatories and other documents filed by any party with the Court for any purpose and which comprise or contain designated confidential information, or any pleading or memorandum purporting to reproduce or paraphrase such information, shall be filed in sealed envelopes or other appropriate sealed containers on which shall be endorsed the title of this action and an indication of the nature of the contents such sealed envelope or other container, the words "DESIGNATED CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER," and a statement substantially in the following form:

This envelope contains documents which are being filed in this case under seal by (name of party) pursuant to a Protective Order and is not to be opened or the contents thereof to be displayed or revealed except by Order of the Court.

Where possible, those pages claimed to contain confidential information or material shall be segregated from the remainder of the associated material and filed separately. Any document so filed shall not be made a part of the public record herein and shall be returned to the respective parties promptly upon completion of the litigation.

5. Nothing contained herein shall preclude reference to any confidential information in the course of any deposition, so long as the deponent and all persons attending said deposition, whether counsel or otherwise, are authorized to receive such

information under this Protective Order, or by Order of the Court. Any person who was the author or a copy recipient of a document designated confidential may be shown the document for the purpose of interrogation of such person at trial, by deposition, or during the course of preparation for trial.

6. Any party wishing to use confidential information during trial shall give reasonable notice to all other parties to this Protective Order of such intent so that the confidentiality of the information can be protected by agreement or, if necessary, as determined and directed by the Court.

7. The restrictions set forth in any of the preceding paragraphs shall not apply to information and material or any portion thereof which:

(a) was, is, or becomes public knowledge, not in violation of this Protective Order;

(b) was, or is, acquired without obligation of secrecy from a party not a party to this Civil Action having the right to disclose or otherwise supply same;

(c) was previously known to the receiving party; or

(d) is independently developed by the receiving party.

8. Control and distribution of all confidential information and material covered by this Protective Order shall be the responsibility of the counsel of record.

9. An inspection of documents of the Producing Party by another party, prior to the other party receiving copies thereof, shall be deemed to be subject to the terms of this Protective

Order, even as to documents not marked in accordance with the provisions of paragraph 2 of this Order, unless otherwise advised by counsel for the Producing Party. In addition, subject to the Court's approval by entry of this Protective Order, it is agreed that inadvertent production of privileged or attorney's work product documents or information does not waive the attorney-client privilege or attorney's work product privilege if a request for return of such documents or information is made promptly after a party learns of its inadvertent production.

10. Acceptance by a party of information, documents, or things identified as confidential information hereunder shall not constitute a concession that the information, document or thing is confidential. If, subsequent to the acceptance of information, documents, or things identified as confidential hereunder, a party wishes to challenge the other party's claim of confidentiality, that party shall make a written request to the other party that the claim of confidentiality be withdrawn, specifically identifying the information, documents, or things at issue. If the other party refuses to withdraw its claim of confidentiality or makes no response within twenty (20) days of receipt of such request, the party challenging the claim of confidentiality may move this Court for determination of whether the claim of confidentiality is justified. In the resolution of such motion, the burden of establishing the confidentiality of the information, document, or thing shall be on the party who made the claim of confidentiality.


11. The failure of any party to designate as confidential any information or material, whether in writing or other than in writing, shall create a waiver of confidentiality of such information or material.

12. Promptly upon final termination of this litigation, each party having documents containing confidential information or material designated as confidential by another party shall assemble and return to that party all such documents (including all copies, summaries and abstracts thereof) and materials and shall return or destroy all other outlines, compilations, memoranda, documents embodying or concerning confidential information or information obtained from material designated as being confidential except that counsel of record for any party may retain one copy, under seal, in the event of any dispute over the use of or dissemination of information or material, and any attorney work product containing confidential information, subject to the terms hereof. Destruction of any confidential information or material shall be confirmed in writing by the party destroying such information or materials and receipt of any confidential information or material shall be acknowledged by the party receiving same.

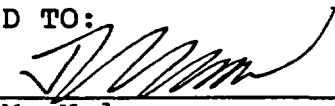
13. This Protective Order may be amended by agreement of counsel for the parties in the form of a stipulation that shall be filed in this case. Any party for good cause shown may apply to the Court for a modification of the Protective Order.

Dated this 17th, day of
~~August~~, 1993.

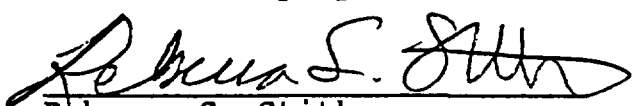
SO ORDERED:


William Stiehl
United States District Judge

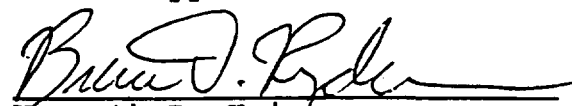
AGREED TO:


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(314) 621-8575

Counsel for Monsanto Company

CONFIDENTIALITY AGREEMENT

_____, declares that: I reside at _____ in the City of _____, County of _____, State of _____.

I have read the Protective Order dated _____ in Cerro Copper Products Co. v. Monsanto Company pending in The United States District Court for the Southern District of Illinois;

I agree to comply with and be bound by the provisions of the Protective Order;

I will keep in confidence, and will not divulge to anyone other than those permitted to have access under the terms of the Protective Order or copy or use except solely for the purposes of Cerro Copper Products Co. v. Monsanto Company, Civil Action No. 92-CV-204-WDS, any information or documents designated confidential pursuant to the Protective Order;

I realize that any violation of the Order may subject me to sanctions by the Court, including punishment for civil contempt.

I declare under penalty of perjury that the foregoing is true and correct. Executed this _____ day of _____, 19__.

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

CERRO COPPER PRODUCTS)	
COMPANY,)	
)	
Plaintiff,)	
)	
vs.)	No. 92-CV-0204-PER
)	
MONSANTO COMPANY)	
)	
Defendant.)	

ORIGINAL

Deposition of JAMES W. PATTERSON,
Ph.D., taken before ANGELA M. ROBINSON, C.S.R.,
Notary Public, pursuant to the Federal Rules of
Civil Procedure for the United States District
Courts pertaining to the taking of depositions at
Suite 4100, One IBM Plaza, in the City of
Chicago, Cook County, Illinois, commencing at
9:00 o'clock a.m., on the 27th day of April 1995.

EXHIBIT

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1 responsive to the subpoena, that is all I'm
2 trying to establish.

3 A Everything in our possession that was
4 responsive.

5 Q Okay. Were there any files that
6 perhaps had to do with correspondence between
7 yourself and counsel for Cerro that were not
8 produced?

9 A Mr. Ricci's firm sent a representative
10 to look at our files also.

11 Q Uh-huh.

12 A I frankly was not involved in either
13 review by your firm or his firm.

14 MR. RICCI: Joe, I can elaborate on that.
15 We did do a privilege review of Dr. Patterson's
16 files and certain documents were withheld under
17 the privilege.

18 I can also tell you that in
19 preparing for this deposition today, I was going
20 through some files that were produced and it
21 appears that there may have been some documents
22 inadvertently supplied to Monsanto that may, in
23 fact, be covered by the privilege. And if any of
24 those documents come out today, then I may be

1 asserting the privilege on those as well.

2 MR. NASSIF: Did you prepare a privilege log
3 or anything, so we have an idea of what was not
4 produced?

5 MR. RICCI: We have a -- you don't have a
6 privilege log with respect to documents that were
7 withheld, just as we don't have a privilege log
8 yet for documents that you've withheld from the
9 production, but one is in the process of being
10 prepared and we will provide you with that.

11 BY MR. NASSIF:

12 Q Okay. Are you teaching at all today,
13 Dr. Patterson?

14 A No.

15 Q Dr. Patterson, my understanding is that
16 there is a chair in your name at the Illinois
17 Institute of Technology; is that correct?

18 A No.

19 Q Was there ever?

20 A No.

21 Q Is there a chair at anywhere that has
22 been established by anyone associated with the
23 Marmon Group?

24 A An endowed chair?

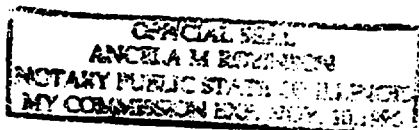
1 hereinabove referred to.

2 The signature of the witness was
3 not waived, and the deposition was submitted to
4 the deponent as per copy of the attached letter.

5 Pursuant to Rule 30(e) of the
6 Rules of Civil Procedure for the U.S. District
7 Courts, if deponent does not appear to read and
8 sign the deposition within 30 days or make other
9 arrangements for reading and signing, the
10 deposition may be used as fully as though signed,
11 and this certificate will then evidence such
12 failure to appear as the reason for signature
13 being waived.

14 The undersigned is not interested
15 in the within case, nor of kin or counsel to any
16 of the parties.

17 Witness my official signature and
18 seal as Notary Public in and for Cook County,
19 Illinois, on this 4th day of May 1995.



Angela M. Robinson
ANGELA M. ROBINSON, C.S.R.,
Notary Public
105 West Madison Street
Suite 900
Chicago, Illinois 60602
(312) 782-8376

License No. 084-003716